

HEALTH AND SENIOR SERVICES

DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT

PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL

INCOME STANDARDS

Proposed Amendments: **N.J.A.C. 8:83-2.1 and 6.2**

Proposed New Rule: **N.J.A.C. 8:83-2.2**

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health
and Senior Services.

Authority: N.J.S.A. 30:4D-20 through 24.

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-153.

Submit written comments by June 18, 2004 to:

Kathleen Mason, Assistant Commissioner
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A copy of the proposal is available for review at all offices of the Area Agencies on Aging, which are situated in all 21 counties.

The agency proposal follows:

Summary

Authority for the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program was transferred from the Department of Human Services to the Department of Health and Senior Services (DHSS) pursuant to the Executive Reorganization Plan No. 001-1996. Accordingly, the rules establishing the PAAD Eligibility Manual were

recodified from N.J.A.C. 10:69 to N.J.A.C. 8:83 administratively effective October 15, 1997 (see 29 N.J.R. 4679(a)).

The PAAD Eligibility Manual is promulgated to set forth the basic policies and procedures related to assistance to persons whose levels of income disqualify them for medical assistance under the Medical Assistance Health Services Act but who have significant needs for prescribed drugs and/or insulin needles, insulin syringes, certain diabetic testing materials, needles and syringes used for injectable medication for the treatment of multiple sclerosis and are unable to fully meet the cost of such items. The PAAD Program is fully State funded under the administration of the Department of Health and Senior Services.

At N.J.A.C. 8:83-2.1, the Division has amended the definition section, adding definitions for "special needs trust" and "viatical settlement." N.J.A.C. 8:83-2.2 has been added to provide provisions of a "special needs trust." N.J.A.C. 8:83-6.2 has also been amended to include the COLA adjustment for income limits and other sources of income that are includable and excludable in determining eligibility for the PAAD program.

Under includable income, the following changes have been made: death benefits were added with bequests, annuities were clarified to include qualified and nonqualified, different types of IRAs--Traditional, Simple, Roth, and Educational were added, benefit payments from foreign countries, gambling and lottery winnings and rental income-net after expenses were also included.

One source of income that has been added to excludable income is the capital gain from the sale of a main home pursuant to a change in Federal and State law. The one-time capital gain, up to \$125,000, was excluded pursuant to N.J.S.A. 54A:6-9, which was repealed by P.L. 1998, c.3, § 2, effective March 20, 1998. The new exclusion, pursuant to N.J.S.A. 54A:6-9.1, allows for a one-time capital gain of \$250,000 for a single person and \$500,000 for married couples.

Other excludable income includes rewards from health care fraud or abuse cases, Holocaust reparations, viatical settlements, special needs trusts, rollovers from one financial instrument to another, 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies and demutualization.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

PAAD provides assistance to lower income elderly and disabled individuals who do not qualify for Medicaid, but continue to need help in meeting the costs of prescriptions for medications and certain prescribed supplies. Approximately 200,000

individuals currently use PAAD benefits. The proposed amendments and new rule will serve to continue the positive impact of these rules.

Economic Impact

DHSS believes that, because the current rules regarding the PAAD Program provide economic assistance to eligible individuals for the purchase of their needed medications, the proposed amendments and new rule will continue that positive economic impact.

Federal Standards Statement

The PAAD program is completely State funded. Therefore, a Federal standards analysis is not required.

Jobs Impact

DHSS anticipates that the proposed amendments and new rule will have no impact on jobs. PAAD beneficiaries are either elderly or disabled and often not employed. There should be no jobs impact on pharmaceutical providers because there is no change in coverage or payment for pharmaceuticals. The proposed amendments and new rule will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rule will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

While this chapter is primarily concerned with eligibility requirements for PAAD beneficiaries, there are requirements for pharmacies and prescribers, some of which may be considered small businesses that employ fewer than 100 full-time employees pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The proposed amendments and new rule do not impose new reporting or recordkeeping requirements on participating pharmacies, regardless of size. In general, the requirements for pharmacies that want to participate in PAAD are set forth at N.J.A.C. 8:83C. Pharmacies are still required to operate under a valid retail and/or institutional permit issued by the Board of Pharmacy of the State of New Jersey. Out-of-State pharmacies are not allowed to participate in the PAAD program. Pharmacies are still required to file an application and agreement of participation. The PAAD program requires that all drugs be prescribed by licensed practitioners within the scope of their practice and dispensed by licensed pharmacists pursuant to rules promulgated by the New Jersey State Board of Pharmacy, N.J.A.C. 13:39. Pharmacies are required to maintain records that include, but are not limited to, identification of the patient, date of service, drug name, quantity dispensed and price.

There are no capital costs associated with the rules proposed for amendment. These rules are designed to minimize any adverse economic impact on small businesses because there is no change in the existing requirements for dispensing prescribed drugs in the proposed amendments and new rule.

Smart Growth Impact

The proposed amendments and new rule will have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows:

8:83-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Special needs trust" means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 8:83-2.2 for provisions.)

"Viatical settlement" means the sale or cashing in of a life insurance policy prior to death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.

8:83-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

- 1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary;**
- 2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;**
- 3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established;**
- 4. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust;**

5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits;

6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court;

7. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke, or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime;

8. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve. The Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee;

9. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power;

10. The trust shall specifically state that the trustee shall be compensated only as provided by law (N.J.S.A. 3B:18-2 et seq.). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law;

11. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis;

12. The State shall be given advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures;

13. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or

interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

8:83-6.2 Income standards

(a) (No change.)

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$25,058 to be eligible for PAAD.

1. An applicant and spouse shall be considered separate and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.
 - i. Any support payment received by the applicant **for the sole benefit of the applicant** shall be considered as income for PAAD eligibility purposes.
2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.
 - i. PAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for PAAD (for example, when the income of an applicant and his institutionalized spouse is combined at [~~\$24,000~~]**\$25,060**, the applicant is ineligible for PAAD, but if the applicant and spouse are considered separated, the applicant could be eligible for PAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of PAAD. Jointly owned income sources, will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:
 - i.-xii. (No change.)
 - xiii. Bequests **and death benefits**;
 - xiv.-xv. (No change.)

- xvi. Pensions **and black lung benefits;**
 - xvii. Annuities (contributory and non-contributory, **qualified and nonqualified**);
 - xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) **(Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;**
 - xix.-xx. (No change.)
 - xxi. Gambling and lottery winnings; and**
 - xxii. Rental income (net after expenses).**
2. Sources of income which are excluded in considering eligibility for PAAD are as follows:
- i.-iii. (No change.)
 - iv. The one-time capital gain up to \$125,000 from the sale of a principal residence for individuals age 55 or older which is excluded from the State gross income tax pursuant to N.J.S.A. 54A:6-9;
 - iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;**
 - v. Stipends from the Volunteers to Service in America (VISTA), [and] Foster Grandparents programs, **Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;**
 - vi. (No change.)
 - vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5)[.];
 - viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;**
 - ix. Holocaust reparations;**
 - x. Proceeds from viatical settlements;**
 - xi. Proceeds received by the beneficiary of a Special Needs Trust (see N.J.A.C. 8:83-2.2 for provisions);**
 - xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;**

xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and

xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted);

(d)-(l) (No change).

(m) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost-of-living [increase] **adjustment** for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commission will provide notice of the new income limits annually by publication in the New Jersey Register.